

REMARKS

Claims 3 and 34 are amended to correct a typographical error. Support for the amendment is found, for example, on page 22, lines 10-19 of the application.

In response to the Restriction Requirement, Applicant hereby provisionally elects, with traverse, the invention of Group I (claims 1-78), directed to a system comprising a sensor to sense a physiological signal indicative of a predetermined cardiac condition; a gene regulatory signal delivery device that emits a regulatory signal which directly or indirectly regulates a regulatable transcriptional control element; and a controller coupled to the sensor and the gene regulatory signal delivery device, the controller adapted to control the emission of the regulatory signal based on at least the sensed physiological signal.

With regard to the election of species from species I-VI, Applicant provisionally elects, with traverse, specie VI, directed to a system having a gene regulatory signal delivery device comprising an electromagnetic field generator which emits an electromagnetic field. Applicant believes claims 1-78 read on the elected specie VI.

With regard to the election of species from species A-F, Applicant provisionally elects, with traverse, specie D, directed to a system having an event detector which comprises an ischemia detector. Applicant believes claims 1-78 read on the elected specie D.

And with regard to the election of species from species 1-9, Applicant provisionally elects, with traverse, specie 1, directed to a system having a sensor that includes an electrogram sensing circuit. Applicant believes claims 1-78 read on the elected specie 1.

Reconsideration and withdrawal of the Restriction Requirement and the election of species, in view of the remarks below, is respectfully requested.

The Restriction Requirement is traversed on the basis that the inventions are closely related. That is, claims directed to a system comprising a sensor to sense a physiological signal indicative of a predetermined cardiac condition; a gene regulatory signal delivery device that emits a regulatory signal which directly or indirectly regulates a regulatable transcriptional control element; and a controller coupled to the sensor and the gene regulatory signal delivery device, the controller adapted to control the emission of the regulatory signal based on at least the sensed physiological signal (claims 1-78; Group I) are related to claims directed to a method to prepare an implantable device, comprising: introducing to an implantable medical device a gene

regulatory signal delivery device that emits a regulatory signal which directly or indirectly regulates a transcriptional control element (claims 124 and 127-129; Group III) and to claims directed to a method of using the system of the invention (claims 125-148; Group IV).

The Restriction Requirement is also traversed on the basis that Restriction Requirements are optional in all cases. M.P.E.P § 803. If the search and examination of at least a portion of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it arguably may include claims to distinct or independent inventions. M.P.E.P. § 803. Moreover, it is submitted that Applicant should not be required to incur the additional costs associated with the filing of multiple divisional applications in order to obtain protection for the claimed subject matter. Due to the relatedness of the subject matter of at least the claims in Group I and Groups III-IV, as discussed above, those Groups can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner.

Moreover, claim 1 links the inventions of Groups I and IV. Therefore, the claims in those Groups should be examined in the same application. M.P.E.P. § 809.03.

Further, Applicant's Representatives respectfully request rejoinder of the claims in Groups III and IV (methods of making and using a device having a gene regulatory signal delivery device) with the claims in Group I, upon a notice of allowable subject matter for the claims in Group I.

The requirement to elect a species from species I-VI, species A-F and species 1-9 is traversed on the basis that the disclosed species have a disclosed relationship. For example, each of the species I-VI is a form of energy or a molecule which may control a regulatable transcriptional control element, and each of the species A-F and 1-9 may detect or sense an event indicative of a cardiovascular condition.

Moreover, contrary to the Examiner's assertion, claims 1 and 32 are generic to species I-VI, species A-F and species 1-9.

Thus, the Restriction Requirement and each election of species is properly traversed. Accordingly, reconsideration and withdrawal of the Restriction Requirement and election of species is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

STEVEN D. GIROUARD ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6959

Date

October 27, 2005

By

Janet E Embretson
Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, MS: Amendment, P.O. Box 1450, Alexandria, VA 22313-1450 on this 27 day of October, 2005.

Name

Paula Slicky

Signature

Paul Slicky